

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2008CF2038
)	EEOC NO.:	21BA81032
QUINGHUI GUO,)	ALS NO.:	09-0468
)		
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Gregory Simoncini, and Diane Viverito presiding, upon Quinghui Guo's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2008CF2038; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that:

- (1) The Respondent's dismissal of Count D of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**; and,
- (2) The Respondent's dismissal of Count A and Count C of the Petitioner's charge is **VACATED**, and Count A and Count C are **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION** as herein instructed.

In support of which determination the Commission states the following findings of fact and reasons:

1. On February 6, 2008, the Petitioner filed a five-count (Counts A- E) charge of discrimination with the Respondent. Counts B and E of the charge, in which the Petitioner alleged race discrimination, were administratively closed by the Respondent at the Petitioner's request. In the remaining counts, the Petitioner alleged her former employer, Northwestern University ("Employer") engaged in various acts of retaliation against her in violation of Section 6-101(A) of the Illinois Human Rights Act (the "Act"). Specifically, she alleged the Employer issued her a written reprimand on January 10, 2008, in retaliation for having previously opposed unlawful discrimination on both June 19, 2006, (Count A), and on December 17, 2007 (Count C). Further, the Petitioner alleged the Employer subjected her to unequal terms and conditions of

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

employment on December 17, 2007, in retaliation for her having opposed unlawful discrimination on August 22, 2007, when it allegedly forced her to take unpaid medical leave rather than allowing her to use her accumulated paid sick time (Count D).

2. On July 22, 2009, the Respondent dismissed Count A, Count C and Count D for lack of substantial evidence. On August 25, 2009, the Petitioner filed a timely Request.
3. The undisputed evidence in the investigation file shows the Petitioner worked for the Employer as an Academic Technology Support Specialist. She was hired by the Employer on December 1, 1992.
4. In May of 2006, the Petitioner's former supervisor, Justin Bondi, submitted his resignation. The Petitioner applied to be promoted to Bondi's position. The Petitioner was not selected for promotion.
5. In June of 2006, the Petitioner filed a complaint with the Employer's internal Office of Equal Opportunity, Affirmative Action and Disability Services ("EEO") because she believed she was denied the promotion because of her race, Asian.
6. On July 21, 2006, the Employer's Human Resources Generalist, Susan Zemelman, informed the Petitioner the Employer had investigated her complaint and found no evidence of discrimination.
7. In September 2006, the Employer hired Don Kenyon, who became the Petitioner's new supervisor.
8. On December 14, 2007, the Petitioner filed a charge of discrimination with the Respondent against the Employer.
9. On December 17, 2007, the Petitioner sent Kenyon an e-mail in which she advised him that she had a medical appointment that day. She suggested she might need to visit the doctor regularly during work hours. Kenyon responded via e-mail that if she did have recurring medical appointments on a consistent basis, she might want to consider applying for unpaid leave pursuant to the Family Medical Leave Act ("FMLA"). The Petitioner responded, and essentially questioned if other employees had to use FMLA. Kenyon responded that he was not attempting to prevent the Petitioner from using her paid sick leave.
10. The Petitioner does not dispute that she in fact did use her paid sick leave when she visited the doctor during regular work hours.
11. On January 10, 2008, Kenyon issued the Petitioner a written reprimand, stating the Petitioner had failed to meet certain performance expectations, that the Petitioner had been insubordinate to Bob Davis, the Associate Director of Academic Technology, and that she had engaged in uncivil and confrontational e-mail discourse with him and with other colleagues.

12. The Employer admitted it had knowledge of the Petitioner's protected activity of July 2006 and December 2007 prior to Kenyon's January 2008 written reprimand. However, Kenyon denied having had any personal knowledge that the Petitioner had engaged in either of the protected activities at the time he issued the January 10, 2008 written reprimand.
13. The Petitioner alleged the January 10, 2008, reprimand was motivated by retaliation for her having engaged in the aforementioned protected activities. She further believes that Kenyon was aware of her protected activities at the time he issued her first performance evaluation in August of 2007. In her Request, the Petitioner argues this is significant because after having received generally positive performance reviews from the prior supervisors, her performance evaluation from Kenyon was her first somewhat negative evaluation. Further, this negative evaluation was the first evaluation received after she had complained of the alleged discrimination.
14. The Petitioner attaches to her Request performance evaluations dated June 5, 1998, through August 3, 2007. In the last evaluation she received from her former supervisor Bondi, dated August 31, 2006, the Petitioner received ratings ranging from 3 to 4.5 on a scale of 1 to 5.
15. In the August 3, 2007, evaluation given by Kenyon, the Petitioner received ratings ranging from 2 to 5 on a scale of 1 to 7. Kenyon gave the Petitioner an overall year-end rating of 3 on a scale of 1-7, which equated to her being rated a "moderately effective" employee. The Petitioner argues this change in the evaluation of her performance following her complaints of discrimination is evidence of a retaliatory motive on Kenyon's part. She also argues the Respondent erroneously overlooked her prior work history, as evidenced by these evaluations, when it determined the Employer had fairly applied its Correcting Performance Policy to her. Finally, the Petitioner argues there is no evidence to support Kenyon's assertion that he was not aware of her protected activity prior to January 10, 2008.
16. Perhaps the most troubling allegation references the Petitioner's claim that the Respondent's investigator originally assigned to investigate the charge of retaliation was at the same time seeking employment with the Employer in its EEO office. On October 29, 2008, the former investigator informed the Petitioner via e-mail that he was leaving the Respondent's employ in order to take a new position. However, in that e-mail, he did not disclose that he was taking a position with the Employer. Further, the Employer did not disclose to the Petitioner that this investigator had been seeking a position with it during this investigation.
17. In its Response, the Respondent does not address this apparent conflict, including what impact, if any, it may have had on the investigation. Rather, in its Response, the Respondent only argues there is no substantial evidence to support Counts A, C and D of the charge and asks the Commission to sustain its dismissal of those Counts.

Conclusion

Count D: Unequal Terms and Conditions

The Commission's review of the Respondent's investigation file leads it to conclude the Respondent properly dismissed Count D of the Petitioner's charge for lack of substantial

evidence.

Although the Petitioner alleged she was subjected to unequal terms and conditions in retaliation for having engaged in a protected activity, in that she was allegedly forced to use unpaid FMLA time to visit the doctor during work hours, the Petitioner admits she used her paid accrued sick leave for her medical appointments. Therefore, the Petitioner has not presented substantial evidence of an adverse action as to Count D. For that reason, the Respondent's dismissal of Count D is sustained.

Counts A and C: Alleged Retaliatory Reprimand of January 10, 2008

However, the Commission's review of the Respondent's investigation file leads it to conclude that the Respondent's dismissal of Counts A and C of the charge must be vacated and remanded for further investigation.

First, the Petitioner has raised the issue of whether or not Kenyon had knowledge of the Petitioner's protected activity at the time he issued her the written reprimand. The Commission is not convinced the Respondent has thoroughly investigated this issue.

At minimum, the Petitioner's evidence raises the specter of the possibility the reprimand may have been driven by retaliatory motive. The evidence shows that immediately before Kenyon became her supervisor, the Petitioner received consistently good evaluations and positive feedback on her attitude and work product. However, immediately following Kenyon's hire as the Petitioner's supervisor, his assessment of her work and attitude deteriorated to the point that she was deemed to be only a "moderately effective" employee. She was subsequently issued the written reprimand on January 10, 2008.

Therefore, the Commission orders further investigation into the extent of Kenyon's knowledge of the Petitioner's protected activity prior to January 10, 2008. The Respondent is instructed to conduct further investigation to determine whether or not Kenyon could have obtained knowledge of the Petitioner's protected activity prior to issuing her the written reprimand.

Second, the Commission orders the Respondent to investigate the Employer's protocol regarding employee complaints of discrimination. Specifically, the Respondent is to determine the Employer's practice and policy with respect to revealing such information to a complainant's direct superior. The Respondent is ordered to investigate whether or not, pursuant to the Employer's protocol, it is likely Kenyon would have been informed of the Petitioner's protected activity by the Employer prior to the issuance of the January 10, 2008, reprimand.

Finally, the Commission orders the Respondent to directly address the apparent conflict created by the fact the investigator originally assigned to this matter was seeking employment with the Employer while simultaneously investigating alleged discrimination by the Employer. The Respondent shall provide information regarding when it discovered the potential conflict,

and what measures it took to ensure that its findings and final determination were not compromised by this conflict.

THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) The Respondent's dismissal of Count A and Count C of the Petitioner's charge is **VACATED**, and Count A and Count C of the charge are **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION**, as herein instructed; and,
- (2) The Respondent's dismissal of Count D of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Northwestern University, as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 8th day of March 2010.

Commissioner Munir Muhammad

Commissioner Gregory Simoncini

Commissioner Diane Viverito